



California Fair Political Practices Commission

December 6, 1985

Cecilia J. Keehan
1248 Levin Avenue
Mountain View, CA 94040

Re: Your Request for Advice
Our File No. A-85-247

Dear Ms. Keehan:

The letter your wrote to Dan Stanford, Chairman of the Fair Political Practices Commission was directed to my attention for response. You requested advice on three separate questions and I will answer each individually.

QUESTION ONE

Two members of the Mountain View Environmental Planning Commission are also members of a school board and have recently participated in a decision to rezone excess school lands. You asked if the appearance of a conflict of interest from holding two positions would require disqualification.

The Political Reform Act (the "Act")^{1/} provides that no public official shall make, participate in making or use his or her official position to influence the making of any governmental decision in which he or she has a financial interest. (Government Code Section 87100.) From the information provided in your letter, there is no showing that the decision affected a private financial interest of the officials.

The Act does not address possible conflicts arising from holding two public offices. The Attorney General's Office is the only state agency which gives this advice. I enclose a copy of our September 1985 Bulletin which contains a listing of several Attorney General's Opinions on the subject.

QUESTION TWO

An employee of the Mountain View - Los Altos Union High School District is a member of your city council and as such

1/ Government Code Sections 81000-91015.

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participated in a decision affecting the school's rezoning. The official participated in the decision even though there is, in your opinion, an "appearance" of a conflict.

Again, there must be some showing of an impact on the official's private financial interest to require disqualification. For example, if the official had a real property interest that would be affected by the rezoning decision, that decision may have a financial impact on the official.

QUESTION THREE

You asked if the Commission or the Legislature had ever considered allowing public officials to participate in discussions but not allow them to vote when they are otherwise disqualified from voting on a decision. You also stated that planning commissioners are permitted to call their colleagues by phone to lobby when their participation is not sanctioned by law.

I am not sure just what law you are referring to which would allow an official, who is disqualified from voting on a decision, to make telephone contacts to fellow members to discuss that issue.

Under the Act, no public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. For the purposes of influencing a decision, an official may not contact, appear before or otherwise attempt to influence any member, officer, employee or consultant of the agency. By allowing an official to communicate with fellow commission members, you are giving the official the power to sway, or influence, the final vote of the agency. The Commission has not considered amending the law nor would it further the purposes of the Act to allow an official to participate in the decision process, but disallow a vote.

I hope this answers some of the questions in your letter.

Sincerely,



Jeanette E. Turvill
Legal Assistant
Legal Division

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1248 Levin Avenue
Mountain View, CA 94040
November 19, 1985

Mr. Dan Stanford, chair
Fair Political Practices Commission
1100 K Street
Sacramento, CA 95814

Dear Mr. Stanford:

If this inquiry is being misdirected, I apologize. I hope it gets to the right place eventually.

On the Mountain View Environmental Planning Commission are two people who are also elected school board members representing two different elementary districts. Recently, they have participated in the re-zoning of their perspective excess school lands which are going to be offered for sale. They announced at the beginning of the meeting that they had been advised by the City Attorney that they could participate in the discussion since they had no conflict of interest, i. e., the re-zoning would not affect them personally as a possible benefit. Of course, in each of the two cases, each board member/commissioner voted for the highest possible density.

Would you be willing to clarify for me the Commission's ruling on such participation when there is at least an appearance of a conflict of interest, at the very least voting against the best interest of the school district might work against them during their re-election campaigns.

A second question: the Mountain View-Los Altos Union High School District is disposing of excess school property and it went before the City Council for a re-zoning. One of our Councilmembers is an employee of the High School District and her salary is negotiated with the District. Again, she was permitted to participate, yet there remained an appearance of a conflict of interest. What is the justification in this case?

In this difficult situation, has the Commission or the Legislature ever considered allowing Planning Commissions to participate in the discussion, but disallowing them from voting? After all, they are permitted to call their colleagues by phone to lobby (when their participation is not sanctioned by law), so in these cases, why not allow their public participation, but disallow a vote. Has this ever been considered?

Thank You.

Sincerely,



Cecilia J. Keehan
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